**IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL**

Chapter VIII, Rule 32(2) (b)
Description of case
**Government Appeal No. 1111 of 2001**
**(Old No. 1563 of 1986)**

Date of decision: 28th July, 2006

A.F.R. (Approved for Reporting)

Not Approved for Reporting

Date 28.07.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

**IN THE HIGH CORUT OF UTTARANCHAL AT NAINITAL**

**Government Appeal No. 1111 of 2001**
(Old No. 1563 of 1986

State ..... Appellant

Versus

Jatan S/o Mitthan,
R/o Das Patti, Rajpur,
P.S. & District Dehradun. ..Respondent

Mr. H.C. Pande, Addl. Government Advocate for the appellant State.
None for the respondent.

**JUDGMENT**

**Coram: Hon'ble Rajeev Gupta, C.J.**
**Hon'ble Prafulla C. Pant, J.**

**RAJEEV GUPTA, C. J. (Oral)**

Appellant State has preferred this appeal under Section 378(1) Cr.P.C. against the impugned judgment of acquittal dated 13.01.1986 passed by Ist Additional Sessions Judge, Dehradun in Sessions Trial No. 3 of 1985, whereby respondent – accused Jatan was acquitted of the charge under Section 302 of the Indian Penal Code.

2. As we are affirming the findings recorded by the Trial Court leading to the acquittal of respondent – accused Jatan, we deem it quite unnecessary to reproduce the details of the prosecution case, which are contained in the impugned judgment and it would suffice to say that respondent – accused Jatan was put to trial on the accusation of having committed murder of one Jagan by causing injuries on his head region by means of pick-axe *(Gainti)* in the noon of 15.11.1984.

3. Respondent – accused Jatan abjured his guilt and pleaded false implication.

4. At the trial, the charge against the respondent – accused was sought to be proved on the evidence of PW1 Km. Guddi, PW2 Banarsi, PW3 Itwari, PW4 Man Chand, PW5 Rakesh Kumar, PW6 R.C. Nautiyal, PW7 Fanni Singh, PW8 Ganga Saran, PW9 M.R. Thukral, PW10 Krishna Pal Singh.

5. Of these, PW1 Guddi, PW2 Banarsi and PW3 Itwari were examined as eye-witnesses of the incident, wherein deceased Jagan sustained injuries, leading to his instantaneous death on the spot, itself.

6. The Trial Court, on a close scrutiny of the evidence led by the prosecution, found following infirmities in the evidence of the prosecution witnesses:

i. PW3 Itwari was a pet police witness, as he appeared as a witness in a number of criminal cases of that police station.

ii. **PW2** Banarsi, who claimed to have witnessed the assault on deceased Jagan while urinating could not have seen the incident as the place of occurrence was not visible from the place where he was urinating.

iii. It was highly doubtful that **PW1** Guddi, the daughter of deceased Jagan had actually seen the assault on her father deceased Jagan, as the place where her father deceased Jagan was sleeping on the cot was not visible from the *varanda* where this witness and her mother Smt. Vidya were sitting.

iv. **PW1** Guddi, neither in the First Information Report lodged by this witness nor in her evidence before the Court, spelt out any motive or immediate cause, which could have prompted respondent – accused Jatan to cause the death of deceased Jagan.

v. Even according to the prosecution case, the assailant of deceased Jagan did not bring any weapon with him.

Vi. Other important eye-witnesses i.e. Smt. Vidya (the widow of the deceased), Bhola (brother of the deceased) and Kamla (wife of Bhola) were neither examined by the prosecution nor any explanation was offered for their non-examination.

In view of the above-mentioned serious infirmities found by the Trial Court in the evidence of the prosecution witnesses, the Trial Court found it quite unsafe to act upon the prosecution evidence and therefore, recorded the impugned judgment of acquittal of respondent-accused Jatan.

7. Mr. H.C. Pande, the learned Addl. Government Advocate vehemently argued that the Trial Court has erred in discarding the evidence of the prosecution witnesses on flimsy and untenable grounds.

8. On a thorough scanning of the Trail Court’s Judgment and the evidence led by the prosecution at the trial, in general, and that of PW1 Guddi, PW2 Banarsi and PW3 Itwari, in particular, we are satisfied that the findings recorded by the Trial Court leading to the acquittal of respondent – accused Jatan are based on proper appreciation of the evidence on record.

9. True, the infirmities pointed out by the Trial Court in the evidence of the prosecution witnesses, individually, may not be sufficient to discard their evidence, but the cumulative effect of those infirmities is bound to result in the rejection of the evidence of the prosecution witnesses. The learned Addl. Government Advocate for the State could not point out any such piece of legal evidence, which was not taken into consideration by the Trial Court while recording the impugned judgment of acquittal. Mere possibility of another view on the prosecution evidence will not, by itself, be sufficient for interference in an appeal against acquittal.

10. For the foregoing reasons, the appeal against acquittal fails and is, hereby, dismissed. The impugned judgment of acquittal of respondent – accused Jatan of the charge under Section 302 of the Indian Penal Code is, hereby, affirmed.

**(Prafulla C. Pant, J.)** **(Rajeev Gupta, C.J.)**

28.07.2006 28.07.2006

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